

REPORT  
OF THE  
SECRETARY OF THE INTERIOR,  
COMMUNICATING,

*In compliance with a resolution of the Senate, copies of certain papers  
in reference to Jacob Hall's mail route preëmption case.*

MAY 28, 1860.—Read, and referred to the Committee on Public Lands. Motion to print  
referred to Committee on Printing.

JUNE 2, 1860.—Report in favor of printing submitted, considered, and agreed to.

DEPARTMENT OF THE INTERIOR,  
*Washington, May 26, 1860.*

SIR: In reply to the resolution of the Senate, adopted on the 23d instant, calling for copies of a circular, and of sundry papers of file and record in this department, "in relation to preëmptions to contractors carrying mails through Territories west of the Mississippi, under the general provision for that purpose in the act of Congress, approved 3d March, 1855, making appropriations for the service of the Post Office Department, also in reference to the special post route preëmption, under act of 3d March," 1857, I have the honor herewith to transmit the desired copies, which have been prepared in the General Land Office, and are certified by the Commissioner.

Very respectfully, your obedient servant,

J. THOMPSON, *Secretary.*

Hon. J. C. BRECKINRIDGE,  
*Vice-President, &c.*

GENERAL LAND OFFICE,  
*May 26, 1860.*

I, Joseph S. Wilson, Commissioner of the General Land Office, do hereby certify, that the annexed copies are true and literal exemplifications from the records and files of this office.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[L. S.] JOS. S. WILSON,  
*Commissioner of the General Land Office.*

## CIRCULAR

*In relation to preëmptions to contractors carrying mails through Territories west of the Mississippi, under the general provision for that purpose in the act of Congress approved 3d March, 1855, making appropriations for the service of the Post Office Department, (Statutes for 1855, page 684;) also, in reference to the special post route pre-emption, under the act of 3d March, 1857, (United States Statutes, page 190.)*

GENERAL STATUTE OF MARCH 3, 1855.

GENERAL LAND OFFICE, September 9, 1857.

GENTLEMEN: In the 1st section of the above-mentioned act of Congress of the 3d March, 1855, it is provided that "each contractor engaged or to be engaged in carrying mails through any of the Territories west of the Mississippi, shall have the privilege of occupying stations at the rate of not more than one for every twenty miles of the route on which he carries a mail, and shall have a preëmptive right therein, when the same shall be brought into market, to the extent of 640 acres, to be taken contiguously and include his improvement; but no such pre-emptive right shall extend to any pass in a mountain or other defile."

It is held by this office—

*First.* That to constitute a right of preëmption under this law, the mail route on which the claim is based must form a part of a system stretching laterally across the Territory, being a link in or part of a connected route from the line of the States west of the Mississippi to the Pacific, and that no benefit or privilege is conferred by the said act on routes stretching lengthwise in a northerly or southerly direction in the Territory, and forming no part of such connected route.

*Second.* The party preferring a claim must furnish a map showing the entire route for which he is a contractor, having clearly indicated thereon each particular section claimed as a "station" under the law, with a sworn certificate, indorsed on the said map, from the nearest postmaster to each of the said "stations," showing that said stations are between the several intermediate points designated in the contract with the General Post Office Department, and stating that he, the postmaster, has knowledge of the fact of such "stations" being on the route and located as represented on said map, and further showing the position or relation of his office on the map to the "station" to which he certifies.

This map must be filed in the district office, and be accompanied by evidence from the Post Office Department that the party claiming is a "contractor" on the route indicated.

*Third.* The mail contractor or claimant must file in the proper district office his written declaration of intention to claim the benefits of the law within three months from the selection of his "stations," if on surveyed lands, giving a full description of each station; and if the lands be not surveyed at the time of selection, then such declaration must be filed within three months after the return of the township plat to the district office, that being the period within which, from date of settlement, a claimant is required, by the general preëmption act, to file for unoffered lands.

*Fourth.* Proofs to the satisfaction of the local land officers must be furnished, showing the extent of the *improvement* at each "station," and that it is of a character to fully subserve the purpose of the "station."

The fifth section has been modified, and now stands as follows:

*Fifth.* The mail route may be divided into sections of twenty miles each, and the contractors allowed to preëempt one station in each of said sections, upon its being shown that each station has been selected in good faith under the law, and not for speculative purposes, and that no two stations are within ten miles of each other. (See Secretary's letter of October 30, 1857.)

*Sixth.* Upon unoffered land the claim must be proved up and paid for during the existence of the contract and before the day fixed by the President for the public sale of the land, otherwise any right which the party may have had will be forfeited. Where the land is *offered* and "subject to private entry," proof and payment must be made within twelve months from the date of the commencement of the "improvement."

*Seventh.* Each contractor bringing himself within the law is entitled to a preëmption not exceeding 640 acres, in contiguous tracts, to include his improvements, according to the lines of the public surveys, and not extending to any pass in a mountain or other defile, and, of course, not embracing mineral or other reserved lands.

*Eighth.* Notice to adverse claimants to any portion of the land selected as a station must be given in writing, and should be served in time to allow at least a day for every twenty miles the party may have to travel in going to the place of taking testimony.

SPECIAL STATUTE, ACT MARCH 3, 1857.

By the tenth section of this law the Postmaster General is authorized "to contract for the conveyance of the entire letter mail from such point on the Mississippi river as the contractors may select to San Francisco, in the State of California, for six years," &c.

The twelfth section declares "that the contractors shall have the right of preëmption to three hundred and twenty acres of any land not then disposed of or reserved, at each point necessary for a station, not to be nearer than ten miles from each other: and provided, that no mineral land shall be thus preëmpted."

The principles laid down in the foregoing, respecting the general law of 1855, will apply, under this special statute of 1857, modified only so far as this, that the right of preëmption is restricted to 320 acres, and the stations cannot be admitted nearer than ten miles from each other.

Respectfully, your obedient servant,

THOMAS A. HENDRICKS,  
*Commissioner.*

REGISTER AND RECEIVER at

Approved, September 11, 1857.

J. THOMPSON,  
*Secretary of the Interior.*

WASHINGTON, D. C., *July 26, 1859.*

SIR: The undersigned, mail contractor on route No. 10532, from Independence, Missouri, to Santa Fé, New Mexico, from July 1, 1858, until June 30, 1862, has occupied as mail stations, on said route, under the authority of an act of Congress, approved March 3, 1855, making appropriations for the service of the Post Office Department, the following lands situated in Kansas Territory, and in the land districts of Lecompton and Ogden, to wit: In the Lecompton district, the west half of section 1, southeast quarter of section 1, and southeast quarter of section 2, township 15 south and range 16 east, and west half of section 21, southeast quarter of section 21, and northeast quarter of section 28, township 15 south, range 13 east. In Ogden district, the east half of northeast quarter of section 32, east half of southeast quarter of section 32, township 16, range 6 east; and the east half of northeast quarter of section 5, west half of northwest quarter of section 4, east half of southeast quarter of section 5, west half of southwest quarter of section 4, west half of northwest quarter of section 9, and the west half of southwest quarter of section 9, township 17 south, range 6 east; also, the west half of southwest quarter section 8, southwest quarter of northwest quarter of section 8, township 18 south, range 2 east; south half of northeast quarter of section 7, south half of northwest quarter section 7, northwest quarter section 7, northeast quarter of northwest quarter of section 18, township 18 south, range 2 east; north half of southeast quarter section 12, south half of northeast quarter section 12, township 18 south, range 1 east; all which said lands the undersigned is now claiming the right to preëempt and enter by virtue of said occupancy as mail contractor aforesaid, under the authority of said act.

The undersigned was mail contractor on route No. 8912, running over this same road from July 1, 1854, until June 30, 1858, and during the existence of that contract he preëmpted and entered lands on this same section of said route at the rate of one section for every twenty miles thereof. Those lands, at the end of said contract, belonged to himself and Mr. Hockaday. The present contract commenced at the expiration of the old one, and the undersigned has occupied and claims the right to preëempt these lands under the new contract. If another person than the undersigned had got this new contract there could have been no doubt of his right to enter and preëempt said lands, but as the undersigned has already preëmpted lands along this road, it is contended by some that he cannot again preëempt lands along this same line, even under a new contract.

As this right of preëmpting lands enters largely into the consideration of bidders when they make out their bids for carrying mails on these lines, putting their bids much lower in consequence of this right of preëmption, the undersigned can see neither justice nor reason in discriminating between an old contractor, when he becomes a bidder on a new contract, and any other person, as far as this right to occupy and preëempt stations is concerned.

He certainly becomes a new contractor, and must have all the privileges that any other person could have as such.

Any other view of the case would preclude old contractors from anything like fair competition when bidding for new contracts on these routes on which the right to preëempt lands exists, a thing certainly never contemplated by the framers of the law.

Your opinion is respectfully asked whether the entries of lands on this line under the old contract will preclude me from the right of preëmpting and entering these lands above described under the present contract.

Yours, very respectfully, &c.,

JACOB HALL.

Hon. THOMAS A. HENDRICKS,

*Commissioner General Land Office.*

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GENERAL LAND OFFICE,

*August 2, 1859.*

GENTLEMEN: From a letter of the 26th ultimo, addressed to this office by Jacob Hall, mail contractor, it appears that he claims the right, under his *renewed* contract for transporting the mail *on the same route*, to preëempt stations *other* than those selected under his *old* contract. This claim is inadmissible, and inconsistent with the principle and policy of the act of March 3, 1855.

The grant of lands by preëmption was intended as a bounty to the *first* contractor, and upon the termination of the contract service it ceased, and is not renewable under a subsequent contract either to himself or a successor. The route *once* established accomplishes the object contemplated by the law. To allow, upon any renewal of a contract on the same route, the right to select stations, would absorb all the land on the route, without any corresponding benefit to the public.

Should Mr. Hall apply to enter land upon his *renewed contract* you will reject his application, and he has been informed (on the 1st instant) that his claim is inadmissible.

Respectfully, your obedient servant,

JOS. S. WILSON,

*Acting Commissioner.*

REGISTER AND RECEIVER,

*Lecompton, Kansas Territory.*

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GENERAL LAND OFFICE,

*August 1, 1859.*

SIR: In reply to your letter of the 26th ultimo, inquiring whether upon renewing a mail contract, upon the same route, a contractor would have the right to preëempt stations *other* than those selected under his old contract, I have to state, that Congress, in its general policy affecting the public lands, have been careful to limit, by particular laws, the right to preëempt, on the part of settlers, but to one

selection; and by analogy, in the absence of any express provision to the contrary, we must in administering laws embracing the principle of preëmption, construe them as being subject to the same limitation. Hence, under the postal preëmption allowed by the act of 3d March, 1855, the right to select stations is restricted to and exhausted under the first contract, and that no renewal of the contract renews the right to make further selections.

The policy of the law allowing this privilege was founded on the hypothesis that grants of land at convenient distances for mail stations on routes to the Pacific would not only afford supplies essential to the service, but would encourage immigration and settlement on the line of the route. Therefore it was, that the several stations allotted were restricted to the respective distance of ten miles. It was deemed that this distance between the stations was near enough to meet the object of the law. To allow a contractor, therefore, upon a renewal of his contract upon the same route, the privilege of making a new selection of stations, would interfere with the distances already established, and would upon successive renewals, absorb all the lands on the route, without benefit to the public.

It undoubtedly was the policy of the statute, that stations once erected, on a fixed line of route, would pass from one contractor to his successor, the former agreeing with the latter for any fixture that he might have established, as a matter between the parties themselves.

It is, therefore, the opinion of this office, that upon the renewal of a contract to carry the mail on the same route, the contractor is not entitled to select stations *other* than those already selected under his first contract.

Respectfully,

JOS. S. WILSON,  
*Acting Commissioner.*

JACOB HALL, Esq., *Washington, D. C.*

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DEPARTMENT OF THE INTERIOR,  
*Washington, February 29, 1860.*

SIR: Your report of the 6th August last, and accompanying papers, in the case of Jacob Hall, present for my consideration the question whether, upon the renewal of a contract to carry the United States mail, in a case where the same or a previous contractor had availed himself of the privileges conferred by the third section of the act of Congress approved March 3, 1855, entitled "An act making appropriations for the service of the Post Office Department," &c., the contractor under the new contract will be entitled to enter by preëmption other lands for his stations in addition to the entries which may have been made under the former contract?

My reply to this question is not direct; and it appears to be requisite to set forth and construe the words of the statute, and determine their force and meaning.

They are as follows, (Statutes, vol. 10, page 684:) "*Provided,* \*  
\* \* \* that each contractor engaged, or to be engaged, in

carrying mails through any of the Territories west of the Mississippi, shall have the privilege of occupying stations at the rate of not more than one for every twenty miles of the route on which he carries a mail, and shall have a preëmptive right therein when the same shall be brought into market, to the extent of 640 acres, to be taken contiguously, and include his improvements; but no such preëmptive right shall extend to any pass in a mountain or other defile."

I shall first consider the privileges conferred by this law, and they are two in number, viz: "the privilege of occupying stations" and "a preëmptive right." These are distinct privileges; yet, as we shall presently see, the latter is dependent upon the former.

It appears to be well settled, by the decisions of this department heretofore made, that this law bestows these rights only along the great "through" routes extending from points on the frontiers of the States, "through any of the Territories west of the Mississippi," to New Mexico, Utah, or the regions on the Pacific slope of the continent.

At the date of the enactment of the law under discussion—and the same remark is still true to a great extent—the regions of country "through" which these great routes extended were in the occupancy of the Indian tribes, whose possessory rights were recognized by the United States, and the lands were as yet unsurveyed. It was a matter of doubt, in view of the act of Congress of 30th June, 1834, "regulating intercourse with the Indian tribes," whether mail contractors could enter the Indian country and establish stations there.

Here, then, was a region within which little could be granted beyond "the privilege of occupying stations;" but the possession of this privilege was necessary and valuable to the contractor "engaged, or to be engaged, in carrying mails" "through" it. Accordingly, I am of the opinion that the principal end of the enactment of the law of 1855 is the bestowal of the "privilege of occupying stations" on public lands before the same shall have been brought into market.

But this privilege is not unlimited. No more than one station for every twenty miles of route can be occupied under it, and, in my decision of 30th October, 1857, I reached the conclusion that no two stations should be nearer than ten miles from each other.

This right of occupying stations is given to "each contractor engaged or to be engaged in carrying mails through," &c. It is bestowed on contractors only. To them it is given in the present and in the future. But I am unable to see anything in the law to justify the supposition that any right of occupancy remains in a person who has ceased to be a contractor. The right to occupy stations terminates on the determination of a contract, and is renewed on the renewal of the contract to the same or another contractor, along the same route, or any other route established by law. I, therefore, am of the opinion that the "contractor," during his contract, or upon taking a new one, may change his stations, abandon former ones, and assume fresh ones, not exceeding the terms of limitation as to number and locality prescribed in this act of March, 1855.

Secondly. This law bestows "a preëmptive right." This we have remarked, is a different thing from "the privilege of occupying stations," though immediately depending thereon. This preëmptive



right could not be availed of at the date of the passage of the law, and, by the words of the act, is to be enjoyed, or accrue at a future time, but definitely prescribed, viz: "when the same shall be brought into market." No right of preëmption exists before that time, only a "privilege of occupying stations." Now, as lands are brought into market in the present and future by proclamation of the President, and in that proclamation a day of sale is fixed, the words in the act of 1855 must take that meaning which they properly bear among persons who use familiarly that form of expression, and who speak in the terms made proper by provisions of other statutes. The words "when the same shall be brought into market," therefore describe and refer to that period of time which intervenes between the issuance of the President's proclamation and the public sales of the lands in such proclamation mentioned.

The party entitled to the preëmptive right at this time is the "contractor" who is occupying stations under the law of 1855, and according to the above limitations of the right to occupy, which fall within the body of land to be offered pursuant to proclamation.

All our laws in regard to preëmptive rights have based the preference right to buy upon a subsisting occupancy and use; and the words of this act appear to follow that recognized principle.

The occupant right is limited to the "contractor" as such. The right to enter the land when it is brought into market follows the occupant right, and belongs to the "contractor" as such, and not to one who long since ceased to be a contractor. When the right to occupy has determined, the right to preëempt no longer survives. As this privilege of occupying stations is given to "each contractor engaged or to be engaged," &c., with limitations, so the right to preëempt may accrue to each contractor now or hereafter to be engaged in carrying mails, &c., but it may not accrue to every contractor. It may happen that contractors may have possessed and used the privilege of occupying stations, who will never receive any benefit from the provisions in respect to preëmption, because no lands occupied as stations may be brought into market during the subsistence of their contracts.

After lands have been fully "brought into market," and have become liable to private entry, the mail route preëmption is no longer valuable. The subsisting or any former contractor may, like any other citizen, enter any lands he chooses along the route, and establish his stations to suit his convenience, but he cannot be protected in any claim of preference to lands over any other applicant to enter them.

This view of the act of 1855 appears to be consistent with the provisions of other statutes relative to the public lands, and to be in itself just and practicable. The valuable privilege, in the present and future, is conceded to contractors along those parts of the great through routes which extend through the Indian country, and through lands not yet in market, of occupying the public lands with their stations; thus promoting the safety of their property and the convenience of their employés during the time their mail contracts require them to transport the mail along those routes. When any of the lands that may thus be occupied as stations are brought into market, the contractors,



in the occupancy thereof, are admitted to the exclusive privilege of entering the lands occupied (not exceeding 640 acres) at the legal minimum price; thus enabling them to secure the benefits of any improvements they have made without meeting with competition from others, who, on the lands being exposed to public sale, might be disposed to offer more because of the existence of the improvements upon the land.

When entries have been regularly made, under this law, in the body of lands brought into market, the entered lands pass to the private ownership of the party who was the contractor, just as do other tracts to the parties who have entered them under other preëmption laws.

Any other explanation or construction of the law under review than that above given, would involve serious difficulties; and I see no other which is in harmony with the system of preëmptions and sales established by other laws of the United States which were in force when the law of 3d March, 1855, was enacted, and still continue in force.

The communication of Mr. Hall is now returned; and you will apply the principles herein stated to his case, and to any other cases hereafter where applications are made or entries effected under this act, approved March 3, 1855.

Very respectfully, your obedient servant,

J. THOMPSON,  
*Secretary.*

COMMISSIONER OF THE GENERAL LAND OFFICE.

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GENERAL LAND OFFICE,  
March 8, 1860.

SIR: On the 29th ultimo, the Secretary of the Interior communicated his opinion affirming the decision of this office adverse to your application to enter, for mail stations, certain lands on the renewal of a contract for carrying mails on a route, on which you had selected stations under a former contract.

From a careful review of the postal act of March 3, 1855, the Secretary has concluded that the right to occupy "stations" and the right to preëempt are distinct privileges; that to enable a contractor to enjoy the grant, he must be a *contractor* at the time the land is *brought into market*.

Hence, whenever a contract expires before the land is in market, the right to occupy is divested, and on a renewal of the same the right attaches to the old selections; or, if the route be changed, he may abandon the old and select new ones—the perfection of his claim ultimately depending on his being a contractor at the period of time the land is proclaimed for sale.

The case you present falls within the prescribed restrictions. You selected stations under your first contract, and the right to occupy terminated on its expiration.

On the renewal of the contract for the same route, the right attached

to the old stations *de novo*; subject, however, to the limitations herein expressed.

Very respectfully,

JOS. S. WILSON,  
*Commissioner.*

JACOB HALL, Esq.,  
*Present.*